IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 20TH JUNE 2007 / 20TH JYAISHTA 1929

Crl.L.P..No. 362 of 2007()

CC.46/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT VI, NEYYATTINKARA

.....

PETITIONER/ COMPLAINANT:

SARASWATHY AMMA RESIDING AT GOKULAM,
PANANGODU DESOM, VENGANOOR VILLAGE.

BY ADV. SRI.L.MOHANAN

RESPONDENTS: ACCUSED AND STATE:

---

1. B.MOHANAN NAIR, DEEPAK NIVAS,
KURIATHY, MANACAUD, THIRUVANANTHAPURAM
WORKING AT MORNING AND EVENING SERVICE
CO-OPERATIVE BANK (LTD. NO.T.131). PRESS ROAD,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 362 OF 2007

Dated this the 20th day of June, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.46 of 2005 on the file of the Judicial First Class Magistrate's Court VI, Neyyattinkara.

2. The complaint was filed against the accused -first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. As per the complaint, the accused - first respondent borrowed from the petitioner an amount of Rs.5,00,000/- and issued Ext.P1 cheque towards discharge of the above liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the accused. Notice was issued to the accused and since the amount covered by the cheque was not paid inspite of receipt of notice, the complaint was filed. To prove the case against the first respondent, the petitioner herself was examined as PW.1 and Exts.P1 to P7 were produced. On closing the evidence of the

complainant, the accused was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the accused stated that he had borrowed money from one Vimal Kumar and had issued a cheque in his favour as security which was subsequently manipulated by the complainant. To prove the case of the accused, the said Vimal Kumar was examined as DW.1. Considering the entire evidence, the trial court found that the petitioner miserably failed to prove the case against the first respondent and acquitted him. The trial court also found that the testimony of PW.1 that she had kept Rs.5,00,000/- for her daughter's marriage and that the said amount was given to the accused without obtaining any security from him cannot be believed. The trial court also accepted the evidence of DW.1 to prove the case set up by the accused.

3. After hearing the learned counsel appearing for the petitioner and on perusing the records made available before this Court, this Court is of the view that the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/